

CHAPTER 53.

AN ACT PROVIDING FOR THE FORECLOSURE OF MORTGAGES ON REAL ESTATE BY ADVERTISEMENT.

Be it enacted by the Legislature of the State of Minnesota:

Foreclosure by advertisement.

When a party may be entitled to give the

SECTION 1. Every mortgage of real estate, heretofore or hereafter executed, containing therein a power of sale, upon default being made in any condition of such mortgage, may be foreclosed by advertisement within ten years after the maturity of such mortgage or the debt secured thereby in the cases and in the manner hereinafter specified.

SEC. 2. To entitle any party to give a notice as hereinafter prescribed, and to make such foreclosure, it is requisite:

First. That some default in a condition of such mortgage has occurred, by which the power to sell has become operative.

Second. That no action or proceeding has [been] instituted at law to recover the debt then remaining secured by such mortgage or any part thereof; or if the action or proceeding has been instituted, that the same has been discontinued, or that an execution upon the judgment rendered therein, has been returned unsatisfied in whole or in part.

Third. That the mortgage containing such power of sale, has been duly recorded, and if it has been assigned, that all the assignments thereof have been recorded.

Foreclosure may be made for installments due.

SEC. 3. When a mortgage is given to secure the payment of money by installments, each of the installments, either of principal or interest, mentioned in such mortgage, may be taken and deemed to be a separate and independent mortgage, for each of such installments, may be foreclosed in the same manner, and with like effect, as if such separate mortgage was given for each of such subsequent installments, and a redemption of any such sale by the mortgagor shall have the like effect as if the sale for such installments had been made upon an independent mortgage.

What may be sold to pay installments.

SEC. 4. In such case, if the mortgaged premises consist of separate and distinct farms or tracts, only such tract or tracts shall be sold as are sufficient to satisfy the installment then due, with interest and costs of sale; but if said premises do not consist of such separate and distinct farms or tracts, the whole shall be sold, and in either case the proceeds of such sale shall, after satisfying the interest portion or installment of the principal due, with interest and costs of sale,

be applied towards the payment of the residue of the sum secured by said mortgage, and not due and payable at the time of such sale; and if such residue does not bear interest such application shall be made with a rebate of the legal interest for the time during which the residue shall not be due and payable; and the surplus, if any, shall be paid to the mortgagor, his legal representatives or assigns.

SEC. 5. Notice that such mortgage will be foreclosed by sale of the mortgaged premises, or some part of them, shall be given by publishing the same for six successive weeks, at least once in each week, in a newspaper printed and published in the county where the premises intended to be sold, or some part thereof, are situated, if there is one, if not, then in a newspaper printed and published in an adjoining county, if there is such a newspaper, if there is not, then in a newspaper printed and published in the county to which the county, in which the premises are located, is attached for judicial purposes, if there be such a newspaper; if there is not, then in a newspaper printed and published at the capital of the State. In all cases, a copy of such notice shall be served in like manner as summons in civil actions in the District Court, at least four (4) weeks before the time of sale, on the person in possession of the mortgaged premises, if the same are actually occupied. Proof of such service may be made, certified and recorded in the same manner as proof of publication of a notice of sale under a mortgage.

Where and how long notice shall be published.

Copy of notice to be served on occupant of premises.

SEC. 6. Every notice shall specify;

What the advertisement shall specify.

First. The names of the mortgagor and of the mortgagee, and the assignee, if any.

Second. The date of the mortgage and when recorded:

Third. The amount claimed to be due thereon, and taxes, if any, paid by the mortgagee at the date of the notice.

Fourth. A description of the mortgaged premises, conforming substantially to that contained in the mortgage, and

Fifth. The time and place of sale.

SEC. 7. The sale shall be at public vendue, between the hours of nine (9) o'clock in the forenoon and the setting of the sun, in the county in which the premises [are] to be sold, or some part thereof are situated, and shall be made by the sheriff of the said county or his deputy, to the highest bidder:

Sale to be made by the sheriff.

SEC. 8. Such sale may be postponed from time to time, by inserting a notice of such postponement, as soon as practicable, in the newspaper in which the original advertisement was published, and continuing such publication until the time to which the sale is postponed, at the expense of the party requesting such postponement.

Postponements.

SEC. 9. If the mortgaged premises consist of separate and distinct farms or tracts, they shall be sold separately, and no more farms or tracts shall be sold than are necessary to satisfy the amount due on such mortgage at the date of notice of such sale, with interest, taxes paid and costs of sale.

Sale in separate tracts.

Who may purchase.

SEC. 10. The mortgagee, his assignees, or his or their legal representatives, may fairly and in good faith, purchase the premises so advertised, or any part thereof at such sale.

Certificate of sale.

SEC. 11. Whenever any sale of real property is made under a power of sale contained in any mortgage, the officer shall make and deliver to the purchaser, a certificate under his hand and seal containing

First. A description of the mortgage under which such sale is made.

Second. A description of the real property sold.

Third. The price paid for each parcel sold separately.

Fourth. The date of the sale and the name of the purchaser, and

Fifth. The time allowed by law for redemption.

When to be executed and recorded.

Said certificate shall be executed, proved or acknowledged and recorded as required by law for a conveyance of real estate, within twenty (20) days after such sale.

When to operate as a conveyance.

SEC. 12. Such certificate, so proved, acknowledged and recorded, shall, upon the expiration of the time for redemption, operate as a conveyance to the purchaser or his assignees, of all the right, title and interest of the mortgagor in and to the premises named therein, at the date of such mortgage, without any other conveyance whatever.

Time of redemption.

SEC. 13. The mortgagor, his heirs, executors, administrators or assigns, whose real property is sold in conformity to the provisions of this act, may, within twelve months after such sale, redeem such property, as hereinafter provided, by paying the sum of money for which the same was sold, together with interest on the same from the time of such sale. Provided, that no redemption shall be made for real property sold in conformity to the provisions of this act, when the mortgage foreclosed contains a distinct rate of interest more than seven per cent. per annum, unless the party entitled to redeem shall pay, within the time provided, the sum for which said property was sold, together with interest thereon from date of sale to the time of redemption, at the rate specified in the mortgage, not to exceed ten per cent. per annum. Provided, that when no rate of interest is specified in the mortgage, the rate of interest after sale shall be seven per cent. per annum on the amount for which the property was sold.

Proviso as to interest.

Manner of redemption.

SEC. 14. Redemption shall be made as follows: The person desiring to redeem, shall pay to the person holding the right acquired under such sale, or for him to the sheriff who made the sale, or his successor in office, the amount required by law for such redemption and shall produce to such person or officer—

First—A certified copy of the docket of the judgment, or the deed of conveyance or mortgage, or of the record or files, evidencing any other lien under which he claims a right to redeem, certified by the officer in whose custody such docket, record or files shall be.

Second—Any assignment necessary to establish his claim, verified by the affidavit of himself or the subscribing witness thereto, or of some person acquainted with the signature of the assignor. And

Manner of redemption.

Third—An affidavit of himself or his agent, showing the amount then actually due on his lien.

SEC. 15. The person or officer from whom such redemption is made, shall make and deliver to the person redeeming, a certificate under his hand and seal, containing—

Certificate of redemption—what it shall contain.

First—The name of the person redeeming, and the amount paid by him on such redemption.

Second—A description of the sale for which such redemption is made, and of the property redeemed. And

Third—Stating upon what claim such redemption is made, and if upon a lien, the amount claimed to be due thereon at the date of redemption.

Such certificates shall be executed and proved or acknowledged and recorded as provided by law for conveyances of real estate, and if not so recorded within ten days after such redemption, such redemption and certificate is void as against any person in good faith, making redemption from the same person or lien. If such redemption is made by the owner of the property sold, his heirs or assigns, such redemption annuls the sale; if by a creditor holding a lien upon the property or any part thereof, said certificate, so executed and proved or acknowledged and recorded, operates as an assignment to him of the right acquired under such sale, subject to such right of any other person to redeem as is or may be provided by law.

Acknowledgment and record.

Effect of redemption.

SEC. 16. If no such redemption is made, the senior creditor having a lien, legal or equitable, on the real estate, or some part thereof, subsequent to the mortgage, may redeem within five days after the expiration of the said twelve months, and each subsequent creditor, having such lien, within five days after the time allowed all prior lien holders, as aforesaid, may, redeem by [paying] the amount aforesaid, and all liens prior to his own, held by the party from whom the redemption is made. *Provided*, That no creditor shall be entitled to redeem, unless, within the year allowed for redemption, he files notice of his intention to redeem in the office of the register of deeds where the mortgage is recorded.

When creditors may redeem.

Notice to be filed.

SEC. 17. The interest acquired upon any such sale is subject to the lien of any attachment, or judgment duly made or docketed, against the person holding the same, as in case of real property, and may be attached or sold on execution in the same manner.

Interest acquired subject to lien, or judgment.

Surplus money after sale. SEC. 18. If, after sale of any real estate, made [or] as herein prescribed, there remains in the hands of the officer making the sale any surplus money after satisfying the mortgage on which such real estate was sold, and payment of the tax and cost of sale, the surplus shall be paid over by said officer, on demand, to the mortgagor, his legal representatives or assigns.

Perpetuating evidence. SEC. 19. Any party, desiring to perpetuate the evidence of any sale made in pursuance of the provisions of this chapter, may procure :

Affidavit of publication. First. An affidavit of the publication of the notice of sale, and of any notice of postponement to be made by the printer of the newspaper in which the same was inserted, or by some person in his employ knowing the facts, and

Affidavit of facts of sale. Second. An affidavit of the facts of any sale pursuant to such notice to be made by the person who acted as an auctioneer at the sale, stating the time and place at which the same took place, the sum bid and the name of the purchaser, which affidavit may be taken and certified to by any officer authorized by law to administer oaths.

Record of affidavits. SEC. 20. Such affidavit shall be recorded at length by the register of deeds of the county in which the premises are situated, in a book kept for the record of deeds, and such original affidavits, the record thereof, and certified copies of such record, shall be presumptive evidence of the facts therein contained.

Duty of register. SEC. 21. A note referring to the page and book where the evidence of any sale, having been made under a mortgage is recorded, shall be made by the register recording such evidence in the margin, of the record of such mortgage, if such record is in his office.

Record to pass title. SEC. 22. A record of the affidavits herein provided, and of the certificates executed on the sale of the premises, shall be sufficient to pass the title thereto, and the said conveyance shall be an entire bar of all claims or equity of redemption of the mortgagor, his heirs and representatives, and of all persons claiming under him or them, by virtue of any title subsequent to such mortgage, except as herein provided.

Affidavit of costs and disbursements to be filed with register of deeds. SEC. 23. That within ten days after foreclosure of any mortgage under the provisions of this act, the party foreclosing, or his attorney, shall make and file with the register of deeds in the county where the property is located, an affidavit of costs and disbursements, setting forth in full, a detailed bill of the costs and disbursements, including attorney's fees, embraced in the foreclosure sale, and that the same has been absolutely and unconditionally paid or incurred.

SEC. 24. That the mortgagor, his heirs or assigns, at any time within one (1) year after foreclosure, may recover from the owner of the mortgage at the time of foreclosure three times

the amount of any costs or disbursements not absolutely paid for said foreclosure, and three times the amount of any bonuses or interest over and above twelve (12) per cent. embraced in said foreclosure, and for which the property was sold, unless said overplus has been paid to the mortgagor or his assigns.

Bonuses or interest over 12 per cent. may be recovered.

SEC 25. This act shall take effect and be in force from and after the first (1st) day of April, A. D. eighteen hundred and seventy-eight (1878).

Approved March 7, 1878.

CHAPTER 54.

AN ACT TO DEFINE HOW LEGAL PUBLICATIONS SHALL BE MADE.

Be it enacted by the Legislature of the State of Minnesota :

SECTION 1. That all notices of sale and foreclosure of mortgages upon real property, of the sale of real estate under or by virtue of any execution, decree, judgment, or otherwise, and all other notices required by law to be published in a newspaper in this State, shall be published in a newspaper printed in the English language. Provided, however, that in counties in which one or more newspapers are published in a foreign language, or partly in the English and partly in the foreign language, the publication of all such advertisements aforesaid, may (in the discretion of the party at whose instance they [are] published, or the party who is by law required to cause such publication to be made, and in a judicial proceeding with the approval and by order of the court before whom the publication is required to be proved), be made in the English language in a newspaper printed in a foreign language, or in a newspaper printed partly in the English and partly in a foreign language, and that all such newspapers so published shall be deemed a proper medium for the publication of all legal advertising.

Legal publications may be made in other than English newspapers.

SEC. 2. All publications heretofore made in this State, required by law to be made in a newspaper, that were made in a newspaper printed and published in a foreign language, and otherwise made in conformity with the rules and requirements of law, shall be deemed valid and legal to all intents and purposes.

Legalizing publications heretofore made.

SEC. 3. Chapter one hundred and thirty-eight (138) of the General Laws of one thousand eight hundred and seventy-seven (1877), and all acts and parts of acts inconsistent with this act are hereby repealed.

Chapter 138 general laws of 1877 repealed.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved March 8, 1878.